

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. _____
v.	:	DATE FILED: _____
JAMES PLANT	:	VIOLATIONS:
	:	15 U.S.C. §§ 78j(b), 78ff, and 17
	:	C.F.R. § 240.10b-5 (securities fraud - 1
	:	count)
	:	18 U.S.C. § 1001 (false statements - 1
	:	count)
	:	18 U.S.C. § 2 (aiding and abetting)
		Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times relevant to this indictment:

Introduction

The Defendant and His Company

1. CyberKey Solutions, Inc. ("CyberKey"), formerly known as CyberKey Corporation, is a Nevada corporation headquartered in St. George, Utah. CyberKey is engaged in the business of selling Universal Service Bus ("USB") flash memory drives and other electronic devices. Defendant JAMES PLANT is the Chairman, Chief Executive Officer and President of CyberKey.

2. CyberKey was formed by defendant JAMES PLANT sometime in 2001. Sometime in 2003, defendant PLANT merged CyberKey with a publicly traded shell company

named Thin Express, Inc. Thereafter, CyberKey's common stock was traded under the symbol "CYKC," and then later under the symbol "CKYS," on the "Pink Sheets," a quotation service for over-the-counter stocks.

Other Relevant Entity

3. The United States Department of Homeland Security ("DHS") is a federal agency whose stated mission is to prevent and deter terrorist attacks and protect against and respond to the hazards to the nation.

The Scheme to Defraud

4. As set forth more fully below, from in or about July 2005 through in or about March 2007, in the Eastern District of Pennsylvania and elsewhere, defendant JAMES PLANT engaged in a scheme to defraud the members of the investing public in connection with the purchase and sale of CyberKey common stock.

5. As part of this scheme, between December 8, 2005 and March 15, 2007, defendant JAMES PLANT caused CyberKey to issue numerous press releases containing materially false and misleading public statements, which were designed artificially to inflate the market price of CyberKey common stock. As a further part of the scheme, defendant PLANT caused CyberKey to retain Big Apple Consulting to generate interest in CyberKey common stock. As defendant PLANT knew, Big Apple Consulting promoted CyberKey stock by calling stock brokers across the country on the telephone and provided them with news about CyberKey. Defendant PLANT knew that by providing Big Apple Consulting with the materially false and public statements, Big Apple Consulting would pass those misstatements along to the stock brokers contacted by Big Apple Consulting.

6. As set forth more fully below, the false and misleading public statements issued by defendant JAMES PLANT concerned (a) a fictitious \$24.5 million purchase order that CyberKey had supposedly received from DHS; (b) falsely inflated revenues and profits that CyberKey had supposedly realized from the fictitious DHS purchase order; (c) false representations that CyberKey's financial statements were in the process of being audited and would be released in the near future; and (d) false representations that the misstatements regarding the DHS purchase order in CyberKey's press releases were the result of improper accounting methods and reporting procedures.

7. As further part of this scheme, between on or about December 9, 2005 and on or about January 29, 2007, defendant JAMES PLANT caused CyberKey to issue more than 880 million shares of CyberKey common stock directly to various entities and individuals, resulting in CyberKey receiving more than \$2.5 million from the sale of CyberKey common stock. As further part of this scheme, and during the same time period, defendant PLANT sold millions of shares of his own personal CyberKey common stock directly to various individuals, resulting in defendant PLANT receiving more than \$1 million from the sale of CyberKey common stock.

**Misrepresentations Concerning The United States
Department of Homeland Security Purchase Order**

8. As part of the scheme to defraud, defendant JAMES PLANT caused CyberKey to issue press releases containing the following materially false and misleading public statements concerning a fictitious \$24.5 million purchase order that CyberKey supposedly received from DHS, when as defendant PLANT knew, that DHS purchase order did not exist:

a. On or about December 8, 2005, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation Receives Multi-Million Dollar Purchase Order from the Department of Homeland Security,” which stated that CyberKey has received a multi-million Dollar purchase order from the Department of Homeland Security. The initial purchase order is in excess of 150,000 units.” In this press release, defendant PLANT was quoted as stating the following: “We are extremely pleased with the opportunity that we have been granted to provide the Department of Homeland Security with our solutions. Government/military sales will develop into a very profitable segment of CyberKey Solutions Inc.”

b. On or about December 29, 2005, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation Closes 2005 with a Multi-Million Dollar Purchase Order from the Federal Government,” which repeated that CyberKey had “close[d] 2005 successfully with a multi-million Dollar purchase order from the Department of Homeland Security “ In this press release, defendant PLANT was quoted as stating the following: “We are very happy with the response that we have been receiving and the momentum that CyberKey has created. We are proud to be providing the Department of Homeland Security and their service men and women with our solutions. This is only the beginning. We expect many more great developments in 2006.”

c. On or about January 31, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation Delivers Initial Shipment Valued Over \$4.2 Million to the Department of Homeland Security,” which stated that CyberKey had “delivered 33,000 CyberKey units, worth more than \$4.2 Million, to the Department of

Homeland Security. This is the initial delivery of the total 150,000 unit and multi-million dollar order submitted by the federal government.” In this press release, Plant was quoted as stating the following: “We are extremely pleased to be providing solutions to the Department of Homeland Security. Having achieved the important milestone signifies a new stage in growth of our company.”

d. On or about February 23, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation Engages Second Manufacturing Facility to Fulfill Increased Number of Orders,” which stated that CyberKey had “engaged with a second manufacturing facility in Northern California. This is in addition to their first production facility located in China.” The press release continued that “[t]he new facility will also allow CyberKey Corporation to continue delivering upon their order of 150,000 units to the Department of Homeland Security. This facility aids CyberKey Corporation in meeting the requirements of the United States government, due to the fact that any company which sells products to the federal government needs to manufacture those products within the U.S.” In this press release, defendant PLANT is quoted as stating the following: “We are very excited to bring on this manufacturing facility in order to assist in fulfilling the overwhelming number of orders that CyberKey has received from different military and government agencies.”

e. On or about March 22, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation is Set to Deliver Second Shipment Valued Over \$4 Million to the Department of Homeland Security,” which stated that CyberKey had “received another delivery release and is shipping another 30,000 CyberKey units, worth more than \$4 Million, to the Department of Homeland Security. This is the second

delivery of the total 150,000 unit purchase order submitted.” In this press release, defendant PLANT is quoted as stating the following: “We are incredibly excited to have supplied our second shipment of solutions to the Department of Homeland Security. As a result of this multi-million dollar order, we anticipate record breaking revenues that will be positively reflected in the price per share.”

f. On or about July 25, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Solutions, Inc.’s Board Approves Insiders Purchase of up to Five Million Shares,” which stated that CyberKey’s “Board of Directors has authorized its officers and directors to buy up to five million shares of common stock directly from the open market. The Board’s decision was based upon the various events that have already unfolded and what the Company believes will be happening in the near future as they continue the fulfillment of the Department of Homeland Security purchase order for \$25,000,000.” In the same press release, defendant PLANT was quoted as stating the following: “Our Directors feel that our shares are extremely undervalued at this time due to the orders we have already received. We entered 2006 with a large purchase order from the Department of Homeland Security for \$25,000,000 and have already delivered half of that shipment.” Plant continued that: “We expect to complete the entire order by the end of the year.”

g. On or about August 1, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Solutions, Inc. Receives Forty-Thousand Unit Purchase Order from the Department of Homeland Security,” which stated that CyberKey’s “\$25,000,000 purchase order from the Department of Homeland Security has been increased by 40,000 units.” The press release continued by stating that “[t]he new order from the Department

of Homeland Security is estimated to be worth more than \$600,000. The initial purchase order from the Department of Homeland Security was for 150,000 CyberKey units, of which 63,000 have already been shipped.” In this press release, defendant PLANT is quoted as stating the following: “This addition of 40,000 CyberKey BIO units is an exciting development for our Company and our shareholders. By expanding our relationships with current customers and increasing orders and revenue, we are continuing to prove that we are an undervalued company with a profitable future.”

9. All of these statements were false and misleading because, as defendant JAMES PLANT knew, CyberKey did not receive any purchase order from DHS and CyberKey did not deliver any of its USB flash memory drives to DHS.

10. Representatives from DHS investigated CyberKey’s claims in its press releases that CyberKey had received a purchase order from DHS. DHS determined that it had no record of doing business with CyberKey. In or about September 2006, counsel for DHS contacted defendant JAMES PLANT several times to attempt either to have CyberKey substantiate its claim that CyberKey has a business relationship with DHS, or to withdraw those press releases referencing that relationship. Neither defendant PLANT nor anyone from CyberKey ever provided DHS with proof of such a business relationship.

11. On September 25, 2006, DHS issued a cease and desist letter to defendant JAMES PLANT. In relevant part, the letter stated the following:

It has come to our attention that CyberKey Solutions, Inc. (“CYKS”) is advertising and claiming a business relationship with the Department of Homeland Security (“DHS”) in its website press releases. The CYKS website cites business with [DHS] in press releases dated August 1, 2006 and August 4, 2006 respectively.

The DHS Chief Information Officer has no knowledge of a contract with CYKS, and CYKS could not be located in a recent search of the DHS contract database. Despite repeated requests, CYKS has been unable to substantiate or verify that CYKS has received a purchase order from DHS. Accordingly, the press releases on the CYKS website are inappropriate and misleading. Therefore, we request that you immediately remove the referenced press releases from your website and halt the reference to business with DHS in any further press releases or communications. We understand your company's intent to market its products; however, your company's reference to business with DHS is inappropriate.

12. Despite the issuance of the cease and desist letter, defendant JAMES PLANT failed to withdraw the false press releases referencing a business relationship between CyberKey and DHS. On October 11, 2006, DHS representatives contacted defendant PLANT concerning his failure to comply with the cease and desist letter, stated the following in a letter: "Although you removed the DHS name from the press release header, your website still refers to DHS in press releases dated August 1, 2006 and August 4, 2006. If all references to DHS are not immediately removed from CyberKey's website, we will contact the Justice Department and pursue the Government's legal remedies."

13. Subsequent to DHS's October 11, 2006 letter, PLANT revised CyberKey's previously-released press releases by replacing "Department of Homeland Security" with more general descriptions, such as "Federal Government Agency" or "the Federal Government." The revised press releases continued to maintain, however, that CyberKey had a \$24.5 million purchase order, although they now stated that the purchase order was with an unnamed large federal agency.

**Misrepresentations Concerning Revenues from the
Fictitious DHS Purchase Order**

14. As a further part of the scheme to defraud, defendant JAMES PLANT caused CyberKey to issue press releases containing materially false and misleading public statements concerning the revenues and profits that CyberKey had supposedly realized from the fictitious DHS purchase order, when as defendant PLANT knew, CyberKey did not receive, and did not expect to receive, any revenues or profits from the fictitious DHS purchase order:

a. On or about April 4, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Corporation Receives \$4.2 Million Payment for Initial Shipment to the Department of Homeland Security,” which stated that “received a payment of \$4.2 Million from the Department of Homeland Security for its initial shipment of 33,000 CyberKey units. The total order submitted by the federal government is for 150,000 units and is expected to exceed \$24 Million.” In the press release, defendant PLANT is quoted as stating the following: “The relationship with the Department of Homeland Security gives CyberKey a platform for generating a continuous revenue stream. We are very excited about providing a suite of solutions to the Federal Government and the growth we are achieving because of it.”

b. On or about July 28, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Solutions, Inc. Reports Over \$12 Million in Earnings for First Two Quarters of 2006,” which stated that CyberKey had “reported total Net Income of \$12,152,060 for the first and second quarters of 2006. The press release further stated that “CyberKey Solutions total income was \$25,050,708.23 which includes the purchase order

from the Department of Homeland Security for 150,000 CyberKey units,” and that “CyberKey Solutions posted a Gross Profit of 12,806,298.97 with total expenses of only \$654,238.78 for the first 6 months of 2006. As a result, CyberKey’s Net profit of more than \$12 Million yielded an earnings per share of more than \$.027.” In the same press release, defendant PLANT was quoted as stating the following: “These financial statements are an accurate reflection of the progress that we made this year. We continue to exceed expectations and show the financial community that we are grossly undervalued at this point in our corporate growth.”

c. Referenced in the July 28, 2006 press release, and available on public Internet websites, were CyberKey’s unaudited financial statements for the first and second quarters of 2006. The financial statements contained the same revenue and profit numbers contained in the July 28, 2006 press release. Although the financial statements were unaudited, defendant PLANT personally signed a certification of the financial statements as follows:

“I, Jim Plant, CyberKey Solutions Chairman, President and Chief Executive Officer, hereby certify that the financial statements filed herewith and any notes thereto, fairly present, in all material respects, the financial position, results of operations, and cash flows for the periods presented, in conformity with accounting principles generally accepted in the United States, consistently applied.”

d. On or about January 29, 2007, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Solutions, Inc. Reports Over \$12.5 Million in Net Earnings and \$33 Million in Revenues for 2006,” which stated that CyberKey had reported “earnings of \$12,884,030 for the fiscal year 2006.” The press release continued that “CyberKey Solutions has generated over \$33,000,000 in revenues, which includes the purchase order from various federal government agencies for 150,000 CyberKey units. CyberKey has also

reported total assets exceeding \$28,000,000, which is a 45% increase over the \$19,500,000 in assets reported for the first half of 2006.” In this press release, defendant PLANT is quoted as stating the following: “This was truly an amazing year for the growth of our company and it is reflected in our financial statements. We will continue to aggressively market our cutting edge security solutions and product line to our ever expanding list of vertical markets.”

e. Referenced in the January 29, 2007 press release, and available on public Internet websites, were CyberKey’s unaudited financial statements for all four quarters of 2006. The financial statements contained the same revenue and profit numbers contained in the January 29, 2007 press release. Although the financial statements were unaudited, defendant PLANT again personally signed a certification of the financial statements as follows:

“I, Jim Plant, CyberKey Solutions Chairman, President and Chief Executive Officer, hereby certify that the financial statements filed herewith and any notes thereto, fairly present, in all material respects, the financial position, results of operations, and cash flows for the periods presented, in conformity with accounting principles generally accepted in the United States, consistently applied.”

15. These statements were false and misleading because, as defendant JAMES PLANT knew, the supposed purchase order from DHS did not exist. Thus, CyberKey did not receive, and did not expect to receive, any revenue or profits from sales of USB flash memory drives to DHS.

**Misrepresentations Concerning the Auditing
of CyberKey’s Financial Statements**

16. As a further part of the scheme to defraud, defendant JAMES PLANT caused CyberKey to issue press releases containing materially false and misleading public statements concerning Cyberkey’s false representations that its financial statements were in the

process of being audited and would be released in the near future, when as defendant PLANT knew, CyberKey did not expect to release audited financial statements in that time period:

a. On or about July 28, 2006, defendant JAMES PLANT caused CyberKey to issue a press release entitled “CyberKey Solutions, Inc. Reports Over \$12 Million in Earnings for First Two Quarters of 2006,” which stated that CyberKey was “currently in the process of auditing their financial statements and is expecting to file them in the near future.”

b. On or about December 20, 2006, defendant JAMES PLANT falsely announced in a paid-for video interview broadcast on a publicly available Internet website that CyberKey’s audited financial statements would be publicly released in “two or three weeks.”

17. These statements were false and misleading because, as defendant JAMES PLANT knew, at the time CyberKey issued those public statements, CyberKey did not expect to release audited financial statements in the near future.

**Misrepresentations Concerning The Events Surrounding the
Discovery of the Fictitious DHS Purchase Order**

18. On or about March 15, 2007, defendant JAMES PLANT caused CyberKey to issue a press release designed to reassure members of the investing public. This press release acknowledged that CyberKey did not have a purchase order directly with DHS, but claimed that defendant PLANT was not involved in, and had no knowledge of, the non-existence of the DHS purchase order. Specifically, the press release stated that CyberKey had never received any revenues, or realized any profits, from the supposed DHS purchase order. The press release claimed that the prior misstatements were issued because “a certain company official has utilized improper accounting methods and reporting procedures while handling critical company

contracts.” The press release added that the DHS purchase order “was not directly with DHS but instead with a third party distributor that was representing it was having the Cyberkey products delivered directly to DHS facilities in different locations.” The press release continued that this unnamed third party never shipped any products to DHS as promised. The press release explained that CyberKey did not receive any revenues because the unnamed third party “circumvented [CyberKey’s] relationship with its manufacturer in China and secured direct payment and delivery of the Cyberkey products without paying Cyberkey anything.” Finally, the press release claimed that CyberKey’s controller “had improperly entered financial data into the accounting system and had forged critical documents and other material information.”

19. In the same press release, defendant JAMES PLANT was quoted as stating the following: “I am deeply troubled by the findings related to the accounting practices of our company. I apologize to our shareholders and the investment community for these problems, which happened on my watch but without my knowledge. I am fully committed to resolving all remaining issues as quickly as possible and to putting the proper remedial measures in place to ensure that this never happens again. We will be releasing corrected financial statements as soon as practicable. We will be updating the investors through our website as more information becomes available.”

20. These statements were false and misleading because, as defendant JAMES PLANT knew, defendant PLANT, and not CyberKey’s controller, was responsible for creating the fictitious DHS purchase order and carrying out the scheme to defraud. These statements were also false and misleading because, as defendant PLANT knew, the reason why CyberKey never realized any revenues from the DHS purchase order was not because a third-party had

circumvented its relationship with CyberKey, but rather because no DHS purchase order ever existed.

Statutory Violation

21. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendant

JAMES PLANT

did knowingly and willfully use and employ, and aided and abetted the use and employment of, manipulative and deceptive devices and contrivances, directly and indirectly, in violation of Rule 10b-5 of the Rules and Regulations of the SEC (Title 17, Code of Federal Regulations, Section 240.10b-5), in that the defendant did knowingly and willfully, directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) make untrue statements of material fact and omit to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the members of the investing public, in connection with purchases and sales of CyberKey stock, by the use of the means and instrumentalities of interstate commerce and the mails.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 20 of Count One are incorporated here by reference.
2. On or about March 7, 2007, defendant JAMES PLANT provided sworn testimony during a deposition to the United States Securities and Exchange Commission (“SEC”) concerning a fictitious purchase order to the United States Department of Homeland Security (“DHS”). During the deposition, defendant PLANT stated, among other things, that the DHS purchase order was not directly between DHS and CyberKey Solutions Inc. (“CyberKey”), but rather was through a different company called Kikomac as the third-party intermediary. Defendant PLANT further stated that CyberKey had received each of the above-described five wire transfer payments from Kikomac. DHS later determined that there was no business relationship between DHS and any company called Kikomac.
3. As defendant JAMES PLANT knew, those statements were false and misleading because CyberKey did not have a purchase order with DHS, either directly or indirectly through a third-party intermediary, and therefore CyberKey did not receive any wire transfer payments in connection with the fictitious DHS purchase order.
4. On or about March 7, 2007, in the District for the District of Columbia, defendant

JAMES PLANT,

in a matter within the jurisdiction of the SEC, an agency of the executive branch of the government of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, stating in sworn testimony before the SEC: (a) that

CyberKey had a \$24.5 million purchase order with DHS through a third-party, when in fact defendant PLANT knew that CyberKey had no such business relationship, either directly or indirectly, with DHS, and (b) that CyberKey had received payments from a third party on the \$24.5 million DHS purchase order, when in fact defendant PLANT knew that CyberKey had not received any such payments relating to the fulfillment of the fictitious DHS purchase order.

In violation of Title 18, United States Code, Section 1001(a)(2).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 15, United States Code, Sections 78j(b), 78ff and Title 17 Code Federal Regulations § 240.10b-5 set forth in this indictment, defendant

JAMES PLANT

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$3.5 million.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

FOREPERSON

**PATRICK L. MEEHAN
UNITED STATES ATTORNEY**